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What's left for 'Social Europe'? Brexit and transnational labour market regulation in the UK-1 and the EU-27

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Abstract

The paper examines UK government positions on the regulation of transnational labour in the context of Brexit. Through an analysis of EU regulations on posted workers – the practice whereby a company based in one EU member state sends workers to carry out a service in another EU member state – the paper argues that the UK has consistently advocated further liberalization of transnational labour markets in EU level decision-making, a position consistent with promoting increasingly 'flexible' labour markets at home. Brexit marks a turning point. Demands from British workers for stronger protection against liberalizing pressure help explain the UK's recent shift towards relaxing its opposition to 'market-correcting' EU initiatives like the revised posted worker directive. Brexit provides a window of opportunity for the revitalization of 'Social Europe' in the EU-27, without a longstanding veto player at the bargaining table, but one more likely focused more on upholding national labour protections than initiating new supranational policies.

Introduction

A central premise of the Leave campaign's 'Take Back Control' slogan in the 2016 UK referendum on EU membership is that the British government should reclaim decision-making autonomy over policy areas that it erroneously ceded to Brussels. Exerting further 'control' over borders to stem the inflow of EU citizens seeking work in the UK

has been a central focus of the Brexit debate. Many Leave campaigners, as well as many Leave voters, blame inward EU migration for declining real wages, increasing precarity and growing inequality within the UK. British politicians continue to make this connection as Britain negotiates its exit from the EU. Labour Leader Jeremy Corbyn argues, for example, that Brexit promises to 'end the wholesale importation of underpaid workers from Central Europe to destroy conditions, particularly in the construction industry' (Andrew Marr Show 2017).

The paper interrogates an implicit assumption underlying the 'take back control' narrative in the Brexit debate: that EU membership has forced UK governments to make choices that it would not have made otherwise. The paper argues with respect to the regulation of transnational labour that the UK has controlled this policy agenda at home as well as in the EU. It demonstrates that since the re-launch of the Single Market in the 1980s the UK's labour market policies at the EU level and domestic level have been mutually reinforcing. In EU-level decision-making, successive UK governments have advocated further liberalisation of transnational labour markets while, at the same time, generally opposed most supranational initiatives to protect EU citizens from its adverse effects (Hopkin 2017, p. 2). British government positions at the EU level have been, in turn, largely consistent with efforts to create more flexible labour markets at home, characterized by a steady supply of migrant labour, increasing causualisation, and declining real wages (Lavery, Quaglia, and Dannreuther 2018).

The paper develops this argument through an in-depth examination of UK positions on EU rules overseeing posted workers, the practice in which a company based in one EU member state sends workers to carry out a service in another EU member state. Since

the ‘Polish plumber’ first appeared as a figure in the French referendum campaign on the EU Constitutional Treaty in 2005, posted workers have served as a lightning rod for concerns about non-native EU workers undercutting local wages and employment rules. The paper shows how the UK has historically opposed EU measures seeking to strengthen supranational regulations overseeing posted workers, often aligning with post-socialist new EU member states. Leaders of this coalition of ‘liberal market’ economies argue EU regulations undermine single market principles and threaten the comparative advantage of lower-waged member states. The result has been an increasingly watered-down EU regulatory framework overseeing posted workers, with numerous loopholes enabling firms to post workers on unregulated short-term contracts, a practice most pronounced in the construction and transport sectors (Crespy and Menz 2015).

Brexit presents a potential critical juncture in this policy trajectory. In the UK, EU critics from the left and right have blamed inward EU migration for declining real wages and increasingly precarious employment conditions of British workers, arguments that came to a head in the EU referendum. In the EU, the Juncker Commission has moved ahead to strengthen European regulations on posted workers, linking a revised posted workers directive to the creation of a European Pillar on Social Rights and a new European Labour Authority. The UK government now finds itself struggling to negotiate the competing demands of upholding its long-standing commitment to promoting pro-market principles with growing domestic pressures to protect British workers from the vagaries of open and deregulated labour markets. The paper suggests this political dilemma can help explain why the UK government has recently

demonstrated more reluctance to join with new EU member states in efforts to resist recent EU initiatives to tighten secondary legislation overseeing posted workers.

The paper contains three parts. The first part analyses the UK as an ideal type of liberal market economy, in contrast to coordinated market economies of Western Europe, focusing on industrial relations and labour market characteristics. The second section goes on to examine how different European modes of influence, including 'market-making' and 'market-correcting' (Höpner and Schäfer 2012), have influenced the UK's liberal labour market model, arguing EU membership has reinforced more than challenged domestic employment policies and practices. The third section then analyses how the UK has sought to actively shape EU regulation of transnational labour markets by tracing the process through which the UK has intervened in EU-level decision-making surrounding posted workers. The concluding section considers the impact of Brexit on labour market regulation in the UK-1 and the EU-27.

The UK and the diversity of EU national welfare capitalisms

The EU is comprised of diverse national welfare capitalisms that differ both in levels of economic development and institutional structures (Scharpf 2002). Comparative European political economy scholars disagree over the extent to which this diversity is sustainable in the face of common European rules of economic and social integration (see Caporaso and Tarrow 2009; Höpner and Schäfer 2012). Most observers concede, however, that continued diversity of political economic models suggest that governing elites retain considerable scope for making effective policy choices at the national level. This section examines the UK as an ideal type of a liberal market economy (LME),

drawing on Hall and Soskice's (2001) influential varieties of capitalism (VoC) framework, focusing on industrial relations and labour market dimensions.

Hall and Soskice (2001) juxtaposes liberal market economies (LMEs) such as the UK with coordinated market economies (CMEs) like Germany to demonstrate diverse responses of developed economies to common pressures associated with globalization and Europeanization. The dominant logic underlying LMEs, according to Hall and Soskice (2001), is that market forces should dictate policy in the form of competitive market arrangements, in contrast to CMEs, which pursue denser, non-market forms of coordination (Hall and Soskice 2001: 8). These different logics shape industrial relations. LMEs follow a more pluralist model in which individual employers and unions negotiate collective agreements at the firm level, but in which union density and collective bargaining coverage remain low. Industrial relations in CMEs, in contrast, are characterised by more corporatist and consensual relationships, whereby firms and trade unions negotiate collective agreements at the sectoral or national level. Union density and collective agreement coverage is comparatively higher in CMEs than in LMEs, and employment regulations stronger.

Comparing UK industrial relations with other EU member states illuminates many core features of the UK as a LME. Approximately 25 per cent of British workers belong to unions, compared to over 60 per cent in Finland, Sweden and Denmark (OECD 2017). Collective bargaining coverage is nearly half of the EU average at 30 per cent, and considerably lower than states like Austria, Belgium or France where almost all workers are covered under collective agreements (ETUI 2017). The UK is also one of a handful of EU states that allow so-called 'zero hour contracts' or temporary work arrangements

that do not guarantee a set number of hours in any given week. Most other EU member states do not allow such contracts, or if, so, the state tightly regulates them, and employers use them rarely. As of 2017, nearly three per cent of the British workforce were on zero hour contracts (ONS 2018). Finally, UK average hourly wage costs are lower than other West European states. British workers taking home an average of 20 euros per hour places them at the EU average. Yet excluding lower wage post-socialist EU member states, the UK's average hourly wage is amongst the lowest in the EU-15, with exception of Greece and Portugal (Fromm, Contreras and Welz 2015).

Since the 2008 global financial crisis, UK workers suffered the biggest drop in average real wages of any EU country except Greece. Between 2007 and 2017, the median real wage in the UK fell by over five per cent (Costa and Manchin 2017). This decline in UK real wages stands in contrast to other EU states, such as Germany, Sweden and Austria, that have experienced real wage growth rates of over ten per cent during this same period. The UK has also exhibited slow productivity growth levels since the financial crisis. The UK's productivity rate – or the ratio of output of goods and services produced compared with inputs – by 2016 was 18 per cent below the G7 average and a full 36 percentage points behind Germany (ONS 2017). Some analysts have explained this 'productivity puzzle' by linking it to Britain's labour market model. They argue that restricted wage growth, combined with flexible labour market policies, reduces the cost of labour to British-based firms, which, in turn, decreases their incentive to invest in capital improvements, including enhancing the skills and training of its workforce (Bryson and Forth 2015).

The 2016 referendum in the UK on EU membership coincided with the most significant contraction of the British economy since the Great Depression (Hopkin 2017, p. 6). The key question raised in the referendum was whether EU membership has a net positive or negative effect on the UK economy, including the situation of British workers. Leave campaigners attributed blame to the EU, and inward migration of EU workers for the economic hardships facing so-called 'left behind' workers and their communities (Goodwin and Heath 2016). Remain campaigners, on the other hand, stressed that EU membership, and the inward migration of (non-UK) EU workers to the UK, had a positive effect on the economy, supported by research showing the EU migrants contributed positively to employment rates, public finances, and, except for certain lower-skilled sectors, wages (Portes and Forte 2017). Both campaigns focused relatively little attention, however, on the impact of specific EU rules and regulations on the UK political economy or, in turn, how the UK sought to influence those rules and regulations as an EU member over the past four decades. A closer inspection of these processes helps illuminate how the UK is not merely a passive 'rule taker' in its relationship to the EU; it has actively shaped those rules.

European integration and the UK liberal market labour model

To analyse the impact of European integration on national capitalist models, one can consider three main dimensions of European integration. 'Negative' (Scharpf 1999) or 'market-enforcing' (Höpner and Schäfer 2012) integration seeks to eliminate formal and informal barriers to the free movement of goods, capital, services and people. 'Positive' or 'market-restricting' integration, on the other hand, involves creating binding EU-level rules regulating cross-border transactions. Finally, 'horizontal' integration involves the EU deploying soft forms of pressure to foster cross-national harmonization. The

following section examines these three dimensions of European integration and their relationship to the UK labour market model.

Market-enforcing integration and the UK labour market model

With respect to 'negative integration,' single market membership promises the free flow of services and persons (in addition to goods and capital) across national borders. Single market rules on free movement of persons allows any citizen of an EU member state to seek work in another EU member state, without restriction, for at least three months. Free movement of services involves the movement of persons since it grants the right of service providers, such as plumbers, architects or accountants, to provide their services freely in another member state, subject to certain conditions such as compliance with national or local licensing rules. Single market rules also allow service firms to hire workers from one EU member state to carry out contracts in another, what the EU has termed posting of workers. The principle underlying efforts to facilitate more seamless cross-border movement of persons and services is the same as logic driving the single market more generally: to enhance economic growth, competitiveness and productivity by allocating resources, including 'human resources,' more efficiently across borders.

The UK has always been a staunch supporter of single market freedoms. Margaret Thatcher was instrumental in re-launching the single market in the 1980s, with her cabinet minister, Lord Cockfield, serving as a key architect of the 1986 Single European Act. Thatcher's vision of transforming the European Community into a single market devoid of internal barriers, von Bismark (2016) argues, 'went hand in hand with her domestic policy of liberalization and deregulation.' At home, Thatcher's efforts to roll

back the state included transforming Britain's industrial relations: namely weakening unions and fostering greater deregulation and commodification of labour (Peck and Ticknell 2007). Thatcher's demand for fiscal discipline foreclosed more resource-intensive readjustment policies, such as skills training and regional development initiatives, leading to a rapid decline of industrial regions hit hardest by these reforms. Internal labour mobility, or citizens moving *within* national borders in search of employment, served as one low-cost means of adjustment. The Single Market created another mechanism of adjustment but scaled to the EU level. In her 1988 Lancaster House speech heralding the Single European Act, Thatcher pledged action 'to let people practice their trades and professions freely throughout the Community' (Margaret Thatcher Foundation 2017a).

Nearly one million British citizens have taken advantage of the right of free movement of persons to live and work in other EU member states, with retirees and high-skilled workers comprising the greatest proportion of outward migrants. A far more politically significant consequence of free movement has been the inward migration of EU workers to the UK, especially after the 2004 and 2007 eastward enlargements, which brought ten post-socialist states with lower wages and levels of development into the EU. Thatcher endorsed eastward enlargement (Margaret Thatcher Foundation 2017b). Her successor, John Major, gave the green light to allowing post-socialist states to apply for full EU membership, based in part on the calculation that widening the EU would come at the expense of deepening (Schimmelfennig 2001: 53). When post-socialist states finally joined the EU in 2004, the UK under the Blair government was one of only three EU states, in addition to Ireland and Sweden, which did not impose temporary restrictions on migrants from new EU member states. Between 2004 and 2009, 1.5

million citizens from new member states migrated to the UK (Sumption and Somerville 2010: 13). By 2017 around 2.4 million EU nationals are working in the UK, comprising seven per cent of the UK work force (The Migration Observatory 2017).

In sum, the EU has always been fundamentally a 'market-making' project designed to eliminate national barriers to the free movement of goods and capital, and, to a lesser extent, services and people, to enhance both national and European competitiveness (Jabko 2012). Thatcher and successive governments have supported this liberalizing project since it has been largely compatible with a process of domestic restructuring away from government intervention in the labour market. As Hopkin (2017, p. 4) argues, the result is that British workers, more than workers in any other EU member state, have been subject to a 'double dose of "market fundamentalism".' Respective UK governments have made political choices to forgo options designed to shield workers from competitive pressures, such as taking advantage of transition periods on allowing EU migrants to access domestic labour markets. Moreover, while other EU member states have exhibited more sustained, if tepid, support for creating more supranational forms of social protection to mitigate the adverse effects of European market liberalization, the UK government has traditionally been far more skeptical of, and in some cases actively opposed to, such 'market-correcting' initiatives.

Market-correcting integration and the British labour market model

Throughout the recent history of European integration, European leaders have generally sought to accompany any move to remove barriers to free movement with counter-moves designed to embed markets in a pan-European society (Caporaso and Tarrow 2009). European Commission President Jacques Delors diluted Thatcher's

vision of European integration as a solely market-making project with his efforts to include a social dimension in the Single European Act. When the 1992 Maastricht Treaty expanded the EU's authority to set European-wide social and employment policies, John Major secured a UK opt out from this new social chapter. Tony Blair opted back in within weeks of taking power in 1997. Indeed, the vision of 'Social Europe' as a more socially protective form of free-market capitalism was generally consistent with New Labour's 'Third Way' vision of a more social market economy (Giddens, Diamond and Liddle 2006). Since Maastricht, the EU has passed six legally binding pieces of employment legislation. These include the Working Time Directive (WTD), which limits working hours and guarantees holidays, and the Temporary Agency Work Directive (TAWD), which requires equal treatment of part-time, temporary, and agency workers.

When it comes to the 'downloading' stage of these market-making initiatives, UK governments have sought to negotiate exemptions in cases where they failed to achieve their full preferences in the 'uploading' or decision-making phase. For example, the UK pushed for an exemption allowing workers to exceed the limit set out in the WTD. In implementing the TAWD, moreover, the UK secured an exception making rules on equal treatment applicable only to employees who worked a minimum of 12 weeks. While the UK successfully negotiated exemptions in implementing certain pieces of EU legislation, in general the UK has been in full legal compliance with these directives (Falkner, et. al. 2007). EU membership has more generally expanded the rights of workers in the UK who, by being a citizen of an EU member state, enjoy full rights and protections under EU treaties. EU citizens can appeal to the European Court of Justice (ECJ) if they believe the UK government is violating these rights (the principle of 'direct effect'), or when there is a demonstrable conflict between EU law and national law (the

principle of 'supremacy'). The UK is also subject to the Charter of Fundamental Rights of the European Union, which guarantees UK citizens a range of economic, social and political rights.

Horizontal integration and the British labour market model

Finally, in addition to these examples of EU hard law, the EU utilizes 'softer' instruments to foster horizontal cooperation in areas where the EU has no formal competence, including social, employment, education and health care policies. 'Naming, shaming and faming' – or a kind of soft sanctioning through peer or public pressure – is the primary means through which the EU seeks to harmonize activities across EU member states, in addition to creating opportunities at the EU level for actors to share best practices. In many ways, the UK's social and employment goals have mirrored those at the EU level. New Labour's employment-centered approach to addressing poverty, for instance, was 'remarkably in line with European initiatives' (Hopkin and van Wijnbergen 2011, p. 255). Just months after David Cameron took power in 2010, the UK signed up to the Europe 2020 goals, a series of targets designed to 'create the conditions for smart, sustainable and inclusive growth'. In most cases, the UK set Europe 2020 targets to align with the UK government's existing agenda – excluding education targets, where the UK refused to set a target at all. Clegg and Bennett (2014) summarize the UK's approach to these softer, more horizontal forms of EU influence as 'cheerful uncooperativeness': UK governments display no particular intention to antagonize the European Commission, and dutifully provide the required information, but, at the same time, exhibit little willingness to engage meaningfully with the process.

In sum, all EU member state governments must reconcile tensions between EU pressures and national labour and social welfare regimes. Yet states, and social actors within them, respond to EU pressures differently depending on where they fall on the continuum between liberal market and coordinated market economies. Negative integration is more likely to be opposed in those member states with stronger coordinated market economy models, where EU rules are portrayed as a threat to national social and labour protections and practices. Positive integration, on the other hand, is more likely to encounter resistance in liberal market economies like the UK, with influential actors framing EU interventions in labour and social policies as undermining free market principles (see Lindstrom 2014). The next section examines in more depth how the UK worked to shape EU rules overseeing posted workers, seeking to privilege 'market-enforcing' single market rules over demands to preserve or strengthen 'market-restricting' labour and social protections.

The UK and transnational regulation of 'posted workers'

Posted workers comprise a relatively small part of the European labour market. In 2017, employers posted over one and a half million EU workers to another EU state to carry out temporary contracts, with the biggest numbers in construction and transport. Posted workers could involve a German construction firm winning a UK government contract to build a power station in Northern England and posting workers from Slovakia to fulfill part of the contract. Likewise, a UK road haulage firm transporting goods from Italy to the UK could hire Spanish drivers to cover that route. While their numbers are relatively small, posted workers have received a significant degree of attention in public debates over the impact of free movement of workers on domestic wages and employment. The posting of workers has raised widespread concerns about

'social dumping', or the practice of 'undermining or evading existing social regulations with the aim of gaining a competitive advantage' (Bernaciak 2014, p. 4). This section examines the EU's approach to posted workers, with a focus on the role of the UK in shaping EU policy on this issue.

The EU passed the Posted Workers Directive (96/71/EC) in 1996. The aim of the directive was twofold: to protect workers' rights and working conditions throughout the EU and to prevent social dumping. The Directive required that workers are entitled by EU law to core rights in the receiving state, including minimum wages, minimum rest periods and paid annual leave. The Directive sought to alleviate concerns in the 1990s that firms posting southern European workers to carry out contracts in northern European states sought to undercut local collective bargaining agreements. Concerns about social dumping heated up again in 2004 when then Single Market Commissioner Frits Bolkestein proposed a new Services Directive. The aim of the Directive was to strengthen the rights of free movement of services within the EU by eliminating what Bolkestein argued was a plethora of national formal and informal barriers preventing foreign service providers from doing business in another EU state. One means of accomplishing this goal was a 'country of origin' principal whereby service providers would be subject to the sending country's employment rules and regulations. A Polish plumbing firm, for example, establishing a plumbing business in France could, under Bolkestein's proposal, pay its Polish plumbers the Polish minimum wage and be subject to Polish employment laws and regulations.

New post-socialist EU member states supported the country of origin principle, arguing that it would strengthen their comparative advantage and enhance single market

competitiveness more generally (Crespy and Gajewska 2010). Yet the proposed Directive spurred considerable protest in Western Europe. Trade unions and other civil society groups organizing large demonstrations in Brussels and Strasbourg. Most West European governments opposed Bolkestein's proposal, with one exception: the UK. Blair's government sided new member states in supporting the country of origin principle and the Services Directive more generally. The final 2006 Services Directive was a watered-down version of Bolkestein's more radical proposal. Critics of the 'country of origin' principle succeeded in eliminating it from the final Directive (Jensen and Nedergaard 2012). But the Services Directive left open legal questions of how to balance the right to free movement of services with the right of governments to require foreign service providers to abide by certain national rules and practices.

A series of subsequent European Court of Justice (ECJ) cases weighed in on this question. In three prominent cases – Laval (2007), Viking (2007) and Rüffert (2008) – service firms carrying out work in other EU states argued that industrial actions or government policies designed to force them to uphold local collective bargaining agreements violated their freedom to provide services under EU law (Joerges and Rödl 2009). In the first case, a Latvian construction firm (Laval) won a Swedish government contract, posted workers from Latvia, and paid them less than rate set by collective agreement. The Swedish union organized a blockade of the building site, prevented Laval from fulfilling the contract, and Laval subsequently sued the Swedish unions for damages. The second case involved a Finnish ferry company (Viking) that posted workers from Estonia, and subsequently sued the International Transport Workers Union for organizing a boycott that Viking argued violated its right under EU law to provide services across borders. Rüffert involved a Polish firm that argued that a Lower

Saxony law requiring any recipient of government contracts to abide by collective bargaining agreements violated their right to free movement under EU law.

The ECJ sided with the firms in all three cases and awarded damages (Viking settled out of Court). The Court argued that requiring foreign firms to abide by non-statutory wages and benefit levels violated firm's right to equal treatment under EU law and infringed on their right to establishment. In an analysis of member state legal briefs submitted to ECJ hearings on the three cases, all new post-socialist EU member states sided with Laval, while all West European governments sided with the trade unions, with one exception: the UK. Not only did the UK argue that the industrial actions had violated the firms' rights to provide services freely across EU borders; its brief went further, arguing that 'there is no legally binding "fundamental social right to take collective action" in Community law' (Lindstrom 2010, p. 1315). The judgements, by reducing the ability of trade unions and local governments to uphold non-statutory collective agreements, struck a blow to states like Denmark, Sweden, Germany and Austria with industrial relations models focused around more informal sector-wide collective bargaining agreements, and were seen to reduce the power of labour vis-à-vis capital more generally (Papadopoulous and Roumpakis 2013).

Since these ECJ judgements, trade unions, with support of many EU member states, have pressured the EU to close loopholes in the PWD, including cracking- down on employers who seek to bypass EU laws overseeing posted workers. In 2014 the EU passed an 'Enforcement Directive' designed to pressure member states to enforce posted worker rules more strictly. Jean-Claude Juncker promised to go further, supporting a revision of the PWD that would ensure, as he stated in his 2016 State of the Union speech, that all

EU citizens would be entitled to 'equal pay for equal work at the same place' (European Commission 2016a). The revised PWD proposal promises to enforce a stricter set of rules governing posted workers. The proposed legislation targets so-called 'letter box companies', or firms that seek to circumvent national rules by securing legal status in another EU state to recruit temporary workers to carry out contracts. It also promises to put collective bargaining agreements on more equal footing as minimum wage rates, which is especially important to Denmark or Sweden that do not have statutory minimum wages. The proposal has been promoted more generally as way to counteract what EU Commissioner for Economic Affairs, Pierre Moscovici, describes as the 'surprising violence of the political and social reaction' to free movement of labour in many EU member states (Financial Times 2016).

Two months after the Commission proposed the legislation in March 2016, parliaments from eleven EU member states triggered the subsidiarity control mechanism, better known as the 'yellow card' procedure. Signatories included all new post-socialist member states, minus Slovenia, and plus Denmark (whose parliament, diverging from the other signatories, argued that the revised PWD did not include *strong enough* protections for upholding collective bargaining agreements). The participating parliaments argued that the revised PWD violates the principle of subsidiarity in that national rules should cover posted workers. Not only did the signatories easily exceed the one-third threshold; it was only the third time that national parliaments had successfully triggered the yellow yard since the Lisbon Treaty entered force in 2009. Given the UK's close alignment with East European states on the 2007 Services Directive and the subsequent ECJ cases, the UK Parliament's decision not to join the yellow card initiative was a notable departure from past actions. Indeed, the UK

decided to submit a collective opinion with France, Italy, Portugal, and Spain arguing that the Commission's proposal was compatible with the principle of subsidiarity.

The European Commission responded to the yellow card challenge by upholding the proposal arguing that the posting of workers is a 'cross border issue by nature' and thus is in full conformity with the subsidiarity principle. Commissioner for Employment, Social Affairs, Skills and Labour Mobility, Marianne Thyssen, went on to state: 'The Juncker Commission remains firmly committed to the free movement of people on the basis of rules that are clear, fair for everybody and enforced on the ground' (European Commission 2016b). The Commission's emphasis on clarity and fairness was consistent with the ECJ judgements in Laval and Viking, but its inclusion of 'fair for everybody' nodded to concerns of trade unions and states such as Denmark about protecting collective agreements. CEE leaders condemned the Commission's judgement. Czech Minister for Europe, Tomas Prouza, remarked, 'After the Brexit vote, the promise was to work on topics that are unifying, not divisive. Having such a divisive decision is not in anybody's interest at the moment' (Robinson and Foy 2016). Another senior diplomat remarked that discussions 'have become, just like in Britain during the referendum, about 'Bloody East Europeans taking our jobs'" (Robinson and Foy 2016).[1]

The revised PWD continued through the legislative process. On 16 October 2017, the European Parliament Committee on Employment and Social Affairs adopted the draft report, with 32 votes in favor and 13 against, thereby starting formal negotiations with the Council (European Parliament 2017). A European Commission official cited the dedicated work of the two rapporteurs – Elisabeth Morin-Chartier (EPP, France) and Agnes Jongerius (S&D, Netherlands) – as being a key factor in the proposal's adoption

with overwhelming consensus (personal interview, 26 October 2017). Of the 13 MEPs on the Committee who voted against the report, 12 were from new EU member states. The one UK Conservative Party MEP on the Committee, Anthea McIntyre, abstained, thereby diverging from her two fellow European Conservatives and Reformists Group members from the Polish Law and Justice Party who opposed the measure.

The proposal headed to the Council, which agreed to the general approach of the revised PWD with 21 member states voting in favour, four against, and three abstaining. The Council upheld the Commission's proposal stating that the principle of equal pay should expect beyond women and men to 'employees with fixed term contracts and comparable permanent workers, between part-time workers and between temporary agency workers' (Council of the European Union 2017, p. 3). In a concession to Denmark, the Council amended the Commission proposal to include a specific clause: the directive should not 'affect in any way the exercise of fundamental rights…including the right or freedom to strike or to take any other action covered by the specific industrial relations systems in Member States, in accordance with national law and/or practice.' Moreover, the Council proposal conceded that 'Nor should this Directive affect the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law and practice.' To make clear that the proposal sought to address concerns since the Laval and Viking judgements about social dumping the proposal clarified that the definition of 'remuneration' underlying its equal pay provisions should 'include, *but not be limited to*, all the elements of minimum rates of pay' (author's emphasis, Council of the European Union 2017, p. 6).

Four member states voted against the proposal: Hungary, Latvia, Lithuania and Poland. Two member states abstained: the UK and Ireland. Leading up to the vote in the Council, the UK advanced no clear position. Indeed, there was some speculation on whether the UK would vote in favour of the adoption of the PWD, which would have represented a significant departure from its previous positions that had consistently opposed the tightening EU regulations of posted workers (personal interview, 26 October 2017). Member states have until 2022 to implement the directive once passed, which the UK government might have calculated would allow them to delay implementation until the end of any Brexit transition period. Another explanation for the UK's abstention, or even tacit support, of the directive is a shift in political calculations. Labour has used the issue of posted workers to acknowledge the concerns of many of its members about the impact of EU migrants on wages and employment, particularly in the construction and transport sectors, and to place the blame on both exploitative employers and the Tory government. If the UK had decided to vote against the proposal in the Council, its decision might have gone unnoticed, at least in the popular British press. Yet Brexit has arguably increased the possibility that British government officials believe that any decision they make in Brussels could be open to increased scrutiny and demands for accountability at home.

Regulating transnational labour markets after Brexit

If a central theme of the Leave campaign in the UK referendum on EU membership was to 'take back control,' it was short on specifics of what the UK government would do once it regained control. The British government's proposed 'Great Repeal Bill' promises to copy all existing EU legislation into domestic UK law, allowing the government to 'amend, repeal and improve' these laws as necessary (BBC 2017). The

question remains what EU employment legislation the UK Parliament is likely to appeal, amend or extend. One of the clearest possibilities for concrete policy change after Brexit is rolling back EU labour regulations, particularly 'market-correcting' measures such as the WTD or the TAWD. International Trade Secretary Liam Fox, for example, declared, 'We must begin by deregulating the labour market. Political objections must be overridden' (D'Ancona 2017). Former Thatcher cabinet member and House of Lords peer Nigel Lawson heralded the wide-ranging program of deregulation in the 1980s as 'transforming the performance of the British economy' and goes on to remark: 'once out of the EU, we have the opportunity to do this on an even larger scale with the massive corpus of EU regulation. We must lose no time in seizing that opportunity' (Rayner and Hope 2017).

Yet Brexit has exposed a deeper ideological divide on the right between traditional small-government forces in the Tory Party and the more protectionist demands of an increasing share of their voters. The poorer and lower-skilled voters who supported the Leave campaign were led to believe that Brexit will lead to a significant reduction in immigration and, subsequently, higher wages and better employment conditions for British workers (Goodwin and Heath 2016). Divisions within the Tory party have been on display most clearly over the issue of the rights of EU citizens to free movement during the Brexit transition period. EU negotiators have demanded EU citizens enjoy full rights under EU law until the transition period ends in 2021. In February 2018, seemingly succumbing to pressure from hardline Brexiteers in her Cabinet, Theresa May announced that Britain would 'battle the EU' and impose a cut-off date of 2019. Yet a month later, May climbed down from that promise and agreed to keep full free movement for EU citizens during the implementation period. Adam Marshall, director

general of the British Chamber of Commerce remarked on the agreement, 'Business will be pleased that during a time of record high labour shortages, the government is showing a pragmatic approach to immigration' (Travis 2018). Brexiteers criticized the agreement as leaving the UK a 'vassal state', bound by EU law but giving the UK no voice in EU decision-making during the transition.

Brexit also creates dilemmas for the opposition Labour Party. Corbyn warned during the referendum campaign that a vote to leave would lead to a 'bonfire' of employment rights, with the Conservative government using Brexit to slash protection for workers (Stewart 2016). After the referendum, Labour leaders joined British labour unions in demanding that the government retains EU employment regulations and cracks down on firms using migrant labour to undercut British wages and social standards after Brexit. Yet many critics of the EU on the British left – including Corbyn – have long argued 'market-enforcing' European integration fosters a race to the bottom in national labour and social regulations and protections. They are also skeptical of 'market-correcting' initiatives to mitigate these pressures at the EU level. Guinan and Hanna (2017: 18) argue, for example, that 'European socialists, whose aim had been to acquire new supranational options for the regulation of capital, ended up surrendering the tools they already possessed at home.' Reclaiming these 'tools' is part of a larger agenda amongst Labour leaders to use Brexit as an opportunity to break with the liberal market national business model that has shaped the UK political economy for the past three decades and move towards a more organized, coordinated form of national capitalism (Jones 2016; Nölke 2017).

As for the remaining EU-27, many proponents of a more social Europe consider Brexit an opportunity to strengthen supranational 'market-correcting' initiatives in the form of employment rights and regulations once the UK as a historic 'veto player' is no longer at the EU decision-making table (Watkins 2016). Van Parijs (2016) argues that to overcome 'Thatcher's Plot' of pursuing 'market-enforcing' integration at the expense of social and labour protections, the EU must now 'build a genuine European polity' that includes 'socio-economic institutions that organize at least part of redistribution on a higher scale'. The Juncker Commission has hesitated to initiate the kind of redistributive initiatives advocated by Van Parijs. Yet the Commission has proposed numerous initiatives, such as a European Pillar on Social Rights or a proposed European Labour Authority, to uphold Juncker's promise of 'equal pay for equal work at the same place.' The revision of the PWD points to EU leaders moving away from the ECJ's 'market-enforcing' judgements in Laval and Viking, whereby EU free movement principles supersede national social and labour protections, and towards a decoupling logic whereby national social and labour protections are kept separate from EU law.

Building a stronger Social Europe after Brexit faces three key challenges. First, the revised posted workers case demonstrates how the 'market-making' coalition once led by the UK and actively supported by post-socialist new EU member states, has become far more fractured after Brexit. Yet this case study also shows that new EU member states are well organized and likely to demonstrate a continued desire to become 'rule-makers' at the EU level (see Schweiger and Visvizi 2018). Second, while the current Tory government vacillates between offering visions of 'Britain First' and 'Global Britain', leaders can use the latter scenario as a bargaining chip. 'I personally hope we will be able to remain in the mainstream of European economic and social thinking,'

Treasury Secretary Phillip Hammond remarks, 'But if we are forced to be something different, then we will have to become something different' (Tooze 2017). This 'something different' could be the UK as a deregulated, low-wage, low-tax offshore haven placing indirect competitive pressures on the continent (Posen 2016). Finally, EU-27 member states are not immune to the pull of exclusionary nationalist populism that fueled Brexit. The dilemma facing governments across the EU is whether and how to address growing perceptions that migration is to blame for increased social dislocation since the global financial crisis. Increasing turns towards more protectionist 'market-correcting' initiatives at the national level, seeking to decouple more policy areas from EU control, may be more likely than supranational initiatives to resuscitate 'Social Europe.'

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[1] The revised PWD proposal encountered another roadblock when France, which had spearheaded the tightened PWD rules at the EU level, witnessed proliferation of so-called 'Molière clauses' passed by local French authorities, which require workers on public sites to speak French. A MEP expressed concerns that this would undermine the PWD proposal by justifying nationalist protectionist exemptions, remarking: 'Next they will create a Shakespeare clause, a Goethe clause, or maybe even an Orbán clause' (Stupp and Barbière 2017). The French government successfully convinced authorities to abandon Molière clauses.